

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
★ JUL 22 2019 ★

BROOKLYN OFFICE

-----X
WELLS FARGO BANK, N.A. et al.,

Plaintiffs,

v.

ACROPOLIS GARDENS REALTY CORP. et al.,

Defendants.
-----X

DECISION & ORDER
18-CV-5498 (WFK)

WILLIAM F. KUNTZ, II, United States District Judge:

On October 18, 2018, this Court appointed a receiver for the property that is the subject of this mortgage foreclosure action. *See* Order Appointing Receiver (“Appointment Order”), ECF No. 31. The Appointment Order states “no person or entity may file suit against the Receiver, his capacity as Receiver, unless otherwise authorized in advance by this Court[.]” *Id.* ¶ (y). On February 27, 2019, non-party the Board of Managers of the 2 Dag Hammarskjold Plaza Condominium (“Dag Hammarskhold”) filed a letter-motion for leave to file a lawsuit against defendant-mortgagor Acropolis Gardens Realty Corp. (“AGRC”) and its court-appointed receiver, David Sorise (“the Receiver”). *See* ECF No. 98. On March 20, 2019, this Court referred this motion to Chief Magistrate Judge Roanne L. Mann for a Report and Recommendation. *See* ECF No. 104.

On June 26, 2019, Judge Mann filed a Report and Recommendation recommending the Court deny Dag Hammarskjold’s application for leave to sue both the Receiver and AGRC. *See* ECF No. 110. Judge Mann reasoned the Receiver bears no liability to Dag Hammarskjold under the terms of the Appointment Order nor is he an indispensable party. Judge Mann also found the relevant factors—(1) whether refusing to lift the stay would maintain the status quo or whether

the moving party would suffer substantial injury if not granted relief; (2) the point during the receivership at which the motion for relief from the stay is made; and (3) the merits of the moving party's underlying claim—weigh against granting leave to commence litigation against AGRC. Objections to the recommendations were due on July 10, 2019. To date, no objections have been filed.

When no objections have been filed, the Court reviews a Report and Recommendation for clear error. *See Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007) (Garaufis, J.). We find no such error here. The Court therefore ADOPTS the Report and Recommendation of Judge Mann in its entirety. Accordingly, it is hereby ordered that Dag Hammarskjold's letter motion requesting leave to commence an action against AGRC and the receiver, ECF No. 98 is DENIED.

SO ORDERED.

s/WFK

HON. WILLIAM F. KENTZ, II
United States District Judge

Dated: July 18, 2019
Brooklyn, New York